

**State of California
Primary Review
Title IV-E Foster Care Eligibility**

**Report of Findings for
October 1, 2011 – March 31, 2012**

Introduction

During the week of November 26, 2012, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State's title IV-E foster care program. The review was conducted in collaboration with the State of California Department of Social Services (CDSS) and was completed by a review team comprised of representatives from the State agency, State courts, Administrative Office of the Courts, county child welfare and probations departments, CB Central and Regional Offices, ACF Regional Grants Management and cross-State Peer Reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether California's title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the Act); and (2) to validate the basis of the State's financial claims to ensure that appropriate payments were made on behalf of eligible children.

Scope of the Review

The primary review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the six-month period under review (PUR) of October 1, 2011 – March 31, 2012. A computerized statistical sample of 114 cases (80 cases plus 34 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed, which consisted of 66 cases from the original sample plus 14 oversample cases. The sample was also stratified to ensure that cases from the State Probation Department were included. There were four (4) identified Probation cases. A total of 22 cases were reviewed and excluded from the sample because no title IV-E foster care maintenance payment was made for a period during the PUR. The Children's Bureau noted that in several of the excluded cases the child should not have been reported to AFCARS because the case had been closed to the foster care program for several years. (A detailed analysis of these cases will be provided to the State in a separate correspondence.) The State provided documentation to support excluding these cases from the review sample and replacing them with cases from the oversample.

In accordance with Federal provisions at 45 CFR 1356.71, the State was reviewed against the requirements of title IV-E of the Act and Federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(1) and (2), and (c), respectively;
- Voluntary placement agreements as set forth in §§472(a)(2)(A) and (d)-(g) of the Act and 45 CFR §1356.22;

- Responsibility for placement and care vested with State agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the State plan in effect July 16, 1996 as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v);
- Placement in a licensed foster family home or child care institution as defined in §§472 (b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child's foster care placement as required at 45 CFR §1356.30.

The case files of each child in the selected sample were reviewed to verify title IV-E eligibility. The foster care provider's file also was examined to ensure the foster family home or child care institution where the child was placed during the PUR was licensed or approved and that safety requirements in accordance with State law(s) were appropriately documented. Payments made on behalf of each child were also reviewed to verify that expenditures were allowable under title IV-E and to identify underpayments that were eligible for claiming. A sample case was assigned an error rating when a title IV-E payment was made on behalf of a child who was not eligible on the date the payment was made during the PUR. A sample case was cited as non error with ineligible payment when a title IV-E payment was made on behalf of a child who was not eligible on the date the payment was made outside the PUR or child was eligible but an unallowable activity was paid using title IV-E maintenance funds. In addition, underpayments were identified for a sample case when an allowable title IV-E maintenance payment was not but could have been claimed by the State for an eligible child.

Compliance Finding

California Department of Social Services is in substantial compliance for the PUR. The review team determined that 78 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) and two (2) cases were determined as in error for either part or all of the PUR. Because the number of cases in error is below the threshold of four (4) or fewer, the State meets the requirement for substantial compliance.

Additionally, five (5) non-error cases were cited for improper claiming of Federal funds. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs, associated with the error cases and non-error cases with improper payments are being disallowed.

Case Summary

The following charts record the error cases, non-error cases with improper payments, underpayments and the reasons for each.

Error Cases

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
14	Removal from and living with requirements not met by the same specified relative [§§472(a)(1)& (2) of the Act; 472 a(3)(A)(ii)(II); 45 CFR §1356.21(l)] Ineligible: Entire FC episode: 05/15/2009-present	\$14,102 Maint. \$27,796 Admin.
61	Aid to Families with Dependent Children linkage not met as unable to determine deprivation. [45 CFR § 233.90] Ineligible: Entire FC episode: 08/24/10 – present	\$7,773 Maint. \$17,215 Admin.

Total: \$66,886

Non-error Cases with Improper Payments

Sample Number	Improper Payment Reason & Ineligibility Period	Improper Payments (FFP)
6	Payments were made for the entire month but the child left the provider before the end of the month. [§475(4); 45 CFR 1356.60(a)(1)(i)] Ineligible: 05/19/2008-05/31/2008	\$131 Maint. \$87 Admin.
6	The clothing allowances were paid for a child placed with an unapproved provider. [§475(4); 45 CFR 1356.60(a)(1)(i)of the Act] Ineligible: 11/2009	\$212 Maint. \$0 Admin.
38	Foster care maintenance payment made for two providers for same period Title IV-E funds were claimed [§475(4); 45 CFR 1356.60(a)(1)(i)] Ineligible: 10/29/2008-10/31/2008	\$39 Maint. \$23 Admin.
41	Clothing allowances were paid at an unapproved rate. [§475(4); 45 CFR 1356.60(a)(1)(i)] Ineligible: 05/2011	\$50 Maint. \$0 Admin.
52	The foster care maintenance payment rate paid was higher than the approved rate. Payments made were at a rate that is authorized for children older than the child in this case. [§475(4); 45 CFR 1356.60(a)(1)(i)] Ineligible: 05/01/2011-09/30/2011	\$87 Maint. \$0 Admin.
77	The foster care payment rate paid was higher than the approved rate. Child was moved to a lower level placement but the payment amount was not changed. [§475(4); 45 CFR 1356.60(a)(1)(i)] Ineligible: 06/01/2012- 07/31/2012	\$1317 Maint. \$0 Admin.

Total: \$ 1,946

Areas in Need of Improvement

The CDSS continues to improve in accurately determining a child's title IV-E eligibility and claiming in accordance with Federal requirements. The State's plan to implement and provide continuous monitoring and oversight of the title IV-E eligibility determination process will further strengthen this improvement, especially insofar as the AFDC linkage requirement is concerned, which was linked to the two (2) error cases.

Issue #1 AFDC linkage: The findings of this review indicate the State needs to further develop and implement procedures to improve program performance with the linkage to the Aid to Families with Dependent Children.

In error case #14, the child had been living with and physically removed from a (non-parent) relative guardian. However, the requisite judicial findings of contrary to the welfare and reasonable efforts findings were made against the child's mother, with whom the child had not lived with for at least than six months prior to the judicial removal. In order to be eligible for title IV-E, a child must have been living with the specified relative from whom the child was removed within six months of the foster care removal episode. Section 472(a)(3)(A)(II)(ii) of the Social Security Act and 45 CFR §1356.21(l)(2),

In error case #61, the title IV-E agency had initially determined that the child met the AFDC eligibility criteria, including that the child's father was not in the home and therefore that the child had been deprived of one of his parents. Sometime prior to the onsite review, the agency reconstructed the child's initial AFDC and title IV-E eligibility and determined that the father had, in fact, been in the home when the child was removed. As such, the agency found that deprivation had not existed, and that the child had been ineligible for title IV-E payments since the time of removal. It should be noted that the CB was never provided with the documents that were completed by the county that removed the child from the home but rather "initial" eligibility documents were provided by the county to which the case was transferred.

Recommended Corrective Action: The CB suggests that the CDSS review the AFDC linkage requirements with the counties on a continuous basis. In addition, the CDSS may want to develop a mechanism by which it can share policy questions and answers with all counties so that they can learn from each others' experiences.

Other actions to consider

In a few cases, the title IV-E eligibility effective date was unclear because documentation on the approval form was inconsistent. The CB recommends that the State more carefully and consistently complete the FC-2 form to more clearly identify the eligibility month and provide training and monitoring to ensure consistency.

The CB strongly encourages the state to continue its efforts to develop a case review monitoring and oversight process that consist of reviewing the eligibility determinations and providing ongoing technical assistance to counties.

Other Concerns

Underpayments: In twelve (12) of the non-error cases, it was determined that title IV-E payments were not claimed at the State and county approved rates. Even though there was a statewide increase in the payment rates to providers, there was a significant delay in implementing these rate changes. In many cases the timeframe for implementing the rate change was several months delayed and in some cases the change was still not made at the time of the review. Note that pursuant to 45 CFR 95.7, title IV-E agencies may claim the identified underpayments "...within two years after the calendar quarter in which the State agency made the expenditures".

We strongly encourage the state to review the process for implementing changes in the foster care maintenance payment rates and develop procedures to improve the timeliness of these changes. By not addressing the issue of timeliness, it not only increases the likelihood of dispersant reimbursements to providers across California but risks the state's ability to claim allowable FFP at the increased rate if claims are not made within the two year period.

Background Clearances: Background clearances for foster family homes and child care institutions were consistently completed timely. However, the lack of coordinated efforts between the CDSS and Community Care Licensing (CCL) delayed the final determination in many of the cases because information was not available onsite during the week of the Review, and only was made available in the weeks following the review. For future IV-E Reviews we encourage the CDSS to begin the coordination efforts with CCL, including its administrators, early in the planning process to identify a lead person who will be assigned to the review team and responsible for providing needed information before and during the review week.

Strengths, Promising Practices

The following positive practices and processes of the title IV-E foster care eligibility program were observed during the review. These approaches seem to have led to successful program performance and operations.

Timely Judicial Determinations and Other Promising Court Activities: For a child to be eligible for title IV-E foster care there must be a judicial finding that it is contrary to the welfare of the child to remain in the home at the first hearing that sanctions the removal of the child. Within 60 days of the removal, a judicial determination must be made that reasonable efforts were made to prevent the removal of the child from the home. In most cases, the court reviewed for and made the judicial finding of both the contrary to the welfare and reasonable efforts to prevent removal at the very first hearing in which the order was made that sanctioned the child's removal, allowing the State to claim title IV-E from the point the child entered care, provided all other eligibility criteria were also met.

Reviewers also noted that in most of the cases reviewed where the child had been in foster care for more than 12 months, the courts assessed for reasonable efforts to finalize the permanency plan every six (6) months, which is sooner than is required for title IV-E eligibility purposes. The CB understands that the Administrative Office of the Courts (AOC), in collaboration with the CDSS, assesses each Juvenile Court by randomly selecting and reviewing cases on these findings and Orders to determine whether it is adhering to the requirements and provides technical assistance to the individual court, as needed.

Other strengths include detention memos to the court that were clearly written and informative about the circumstances that lead to a child's removal. Also, in one county, the child welfare staff had read-only access to court orders which provided an expedited process for the child welfare agency to access court documents. The CB Regional Office will be working with the AOC to learn more about the capabilities and functionalities of this system.

Disallowances

A disallowance in the amount of \$21,875 in maintenance payments and \$45,011 in related administrative costs of Federal Financial Participation (FFP) is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$1,836 in maintenance payments and \$110 in related administrative costs of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$68,832 in FFP. The State also must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

Next Steps

As part of the State's ongoing efforts to improve its title IV-E foster care eligibility determination process, the CB recommends California examines the identified program deficiencies and develop measurable, sustainable strategies that target the cause of problems. The CB Regional Office believes that the title IV-E Review oversight and monitoring process that the CDSS is working towards implementing provides a vehicle to continuous improvements and we will be available, as needed, to provide assistance and guidance. The CB encourages the CDSS to ensure the continued involvement of all its stakeholders in the process.